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 17 HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P.
 HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.
 18 NEXBANK, SSB

19 **UNITED STATES DISTRICT COURT**
 20 **CENTRAL DISTRICT OF CALIFORNIA**

21 MICHAEL R. DANZI, an individual,
 22 Plaintiff,
 23 v.
 24 HIGHLAND CAPITAL
 25 MANAGEMENT, L.P., a Delaware
 26 limited partnership; HIGHLAND
 27 CRUSADER OFFSHORE
 PARTNERS, L.P., a Bermuda limited
 28 partnership; HIGHLAND CREDIT
 STRATEGIES MASTER FUND, L.P.,

Case No. SA CV 09-0039 CJC
(RNBx)

DEFENDANT HIGHLAND
CAPITAL MANAGEMENT, L.P.'S
ANSWER TO PLAINTIFF'S
COMPLAINT

1 a Bermuda limited partnership;
2 NEXBANK, SSB, a Texas chartered
3 savings bank,

Defendants.

4 NEXBANK, SSB, a Texas chartered
5 savings bank,

6 Counterclaimant,

7
8 v.

9 MICHAEL R. DANZI, an individual,

10 Counterdefendant.
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12 HIGHLAND CRUSADER
13 OFFSHORE PARTNERS, L.P., a
14 Bermuda limited partnership;
15 HIGHLAND CREDIT STRATEGIES
16 MASTER FUND, L.P., a Bermuda
17 limited partnership,

18 Counterclaimants,

19 v.

20 MICHAEL R. DANZI, an individual,

21 Counterdefendant.
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1 Defendant Highland Capital Management, L.P. (“Highland Capital” or
2 “Defendant”) files this its Answer to Plaintiff’s Complaint, and would show as
3 follows:

4 **I.**

5 **ANSWER**

6 **ANSWERING SECTION TITLED “THE PARTIES”**

7 1. Defendant is without knowledge or information sufficient to form a
8 belief as to the allegations in paragraph 1 and, therefore, denies the allegations.

9 2. Defendant admits that it is a limited partnership organized and existing
10 under the laws of the state of Delaware; admits that its principal place of business is
11 in Dallas, Texas; otherwise denied.

12 3. Defendant admits that Highland Crusader Offshore Partners, L.P.
13 (“Crusader”) is a Bermuda limited partnership; admits that Crusader’s principal
14 place of business is in Dallas, Texas; otherwise denied.

15 4. Defendant admits that Highland Credit Strategies Master Fund, L.P.
16 (“Credit Strategies”) is a Bermuda limited partnership; admits that Credit Strategies’
17 principal place of business is in Dallas, Texas; otherwise denied.

18 5. Defendant admits that NexBank, SSB (“NexBank”) is a savings bank
19 chartered under the laws of the State of Texas; admits that NexBank’s principal
20 place of business is in Dallas, Texas; otherwise denied.

21 6. No response is required to the allegations in paragraph 6, which purport
22 to state conclusions of law. To the extent a response is required, Defendant denies
23 the allegations in paragraph 6.

24 **ANSWERING SECTION TITLED “JURISDICTION AND VENUE”**

25 7. Paragraph 7 asserts legal conclusions; therefore, Defendant is not
26 required to admit or deny. To the extent Defendant is required to respond,
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1 Defendant admits the citizenship of Defendants as stated, and denies the remaining
2 allegations in paragraph 7.

3 8. Paragraph 8 asserts legal conclusions; therefore, Defendant is not
4 required to admit or deny. To the extent Defendant is required to respond,
5 Defendant denies the allegations set forth in Paragraph 8.

6 **ANSWERING SECTION TITLED “GENERAL ALLEGATIONS”**

7 9. Defendant admits that Crusader, Credit Strategies, and Plaintiff entered
8 into a Limited Liability Company Operating Agreement (“Operating Agreement”)
9 of Legacy Pharmaceuticals International, LLC (“Legacy LLC”) for the purpose of
10 forming Legacy LLC; admits that Legacy Pharmaceuticals International, LLC owns
11 a variety of subsidiary companies, including Legacy Pharmaceuticals U.S., Inc;
12 admits that Legacy Pharmaceuticals U.S., Inc. maintains an office in Orange
13 County, California; and denies the remaining allegations in paragraph 9.

14 10. Defendant admits that Legacy LLC was formed in connection with the
15 acquisition of the businesses and assets of manufacturing plants owned by Valeant
16 Pharmaceuticals International, Inc.; admits that the acquisition was consummated
17 through Legacy LLC’s wholly-owned subsidiaries, Legacy Pharmaceuticals
18 International GmbH (“Legacy GmbH”) and Solco Pharmaceuticals Switzerland
19 GmbH (“Solco GmbH”); and denies the remaining allegations in paragraph 10.

20 11. Defendant admits that Crusader, Credit Strategies, and Plaintiff are
21 Members of Legacy LLC; states that Article I and Article II of Legacy LLC’s
22 Operating Agreement reflect such; and denies the remaining allegations of
23 paragraph 11.

24 12. Defendant admits that Crusader and Credit Strategies entered into the
25 Legacy LLC Operating Agreement with Plaintiff; respectfully refers Plaintiff and
26 the Court to the Operating Agreement for a full and complete recitation of its terms;
27 and denies the remaining allegations of paragraph 12.

1 13. Defendant admits that on or about June 22, 2007, a Credit Agreement
2 (“Credit Agreement”) was entered into between (1) Legacy GmbH, as borrower, (2)
3 Legacy LLC, as one of several guarantors, (3) The Foothill Group, Inc., as a Lender
4 (together with other lenders who might be parties to the Credit Agreement from time
5 to time, the “Lenders”), (4) Highland Financial Corp., as lead arranger of the
6 Lenders, and (5) NexBank, as administrative agent for the Lenders; respectfully
7 refers the Plaintiff to the Credit Agreement for a full and complete recitation of its
8 terms; and denies the remaining allegations in paragraph 13.

9 14. Defendant admits that the Credit Agreement was entered into by and
10 between the parties identified in paragraph 13; respectfully refers the Plaintiff to the
11 Credit Agreement for a full and complete recitation of its terms; and denies the
12 remaining allegations in paragraph 14.

13 15. Denied.

14 16. Denied.

15 17. Defendant admits that Plaintiff sent correspondence to representatives of
16 Crusader and Credit Strategies on September 7, 2008; respectfully refers the
17 Plaintiff to that e-mail for a full and complete recitation of its contents; and denies
18 the remaining allegations in paragraph 17.

19 18. Denied.

20 19. Defendant is without sufficient information to admit or deny the
21 allegations in paragraph 19, and on that basis, the allegations are denied.

22 20. Denied.

23 21. Denied.

24 22. Denied.

25 23. Defendant admits that NexBank sent an e-mail to a representative of
26 Legacy LLC on October 24, 2008; respectfully refers Plaintiff to the e-mail for a full
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1 and complete recitation of its contents; and denies the remaining allegations in
2 paragraph 23.

3 24. Denied.

4 25. Defendant admits that on November 21, 2008, NexBank sent a letter to
5 representatives of Legacy LLC; respectfully refers Plaintiff to the letter itself for a
6 complete and accurate recitation of its contents; and denies the remaining
7 allegations in paragraph 25.

8 26. Denied.

9 **ANSWERING SECTION TITLED "FIRST CLAIM FOR RELIEF"**

10 **(Breach of Fiduciary Duty Against Defendants Crusader and Credit Strategies)**

11 27. Defendant repeats and realleges its foregoing responses to the foregoing
12 allegations herein as if fully set forth at length.

13 28. Denied.

14 29. Denied.

15 30. Denied.

16 31. Denied.

17 32. Denied.

18 33. Denied.

19 **ANSWERING SECTION TITLED "SECOND CLAIM FOR RELIEF"**

20 **(Aiding And Abetting Breach of Fiduciary Duty**

21 **Against Defendant Highland Capital)**

22 34. Defendant repeats and realleges its foregoing responses to the foregoing
23 allegations herein as if fully set forth at length.

24 35. Denied.

25 36. Denied.

26 37. Denied.

27 38. Denied.

1 39. Denied.

2 **ANSWERING SECTION TITLED “THIRD CLAIM FOR RELIEF”**

3 **(Aiding and Abetting Breach of Fiduciary Duty**

4 **Against Defendant NexBank)**

5 40. Defendant repeats and realleges its foregoing responses to the foregoing
6 allegations herein as if fully set forth at length.

7 41. Denied.

8 42. Denied.

9 43. Denied.

10 44. Denied.

11 45. Denied.

12 **DEFENSES**

13 Defendant denies each and every allegation in Plaintiff’s Complaint not
14 expressly admitted herein. Defendant alleges the following defenses with respect to
15 the claims alleged in Plaintiff’s Complaint without assuming the burden of proof
16 where the burden of proof rests on Plaintiff:

17 **First Defense**

18 The Complaint fails to state a claim for which relief can be granted.

19 **Second Defense**

20 The Court lacks or may lack personal jurisdiction over these defendants.

21 **Third Defense**

22 Venue does not properly lie in this Court.

23 **Fourth Defense**

24 Plaintiff’s claims are or may be barred, in whole or in part, by the doctrine of
25 comparable fault.

1 **Fifth Defense**

2 Plaintiff's claims are or may be barred, in whole or in part, by Plaintiff's
3 failure to mitigate damages, if any.

4 **Sixth Defense**

5 Plaintiff has no standing to bring this action because his claims are derivative
6 in nature.

7 **Seventh Defense**

8 Plaintiff's claims are barred by the doctrines of waiver, estoppel and/or
9 ratification.

10 **Eighth Defense**

11 Plaintiff's claims are barred by the doctrine of unclean hands.

12 **Ninth Defense**

13 Plaintiff's claimed injuries or damages, if any, were not caused, enhanced, or
14 increased as a result of any act or failure to act on the part of Defendant.

15 **Tenth Defense**

16 Defendant reserves the right to amend this Answer to specifically plead
17 any additional matters constituting an avoidance or affirmative defense which
18 discovery in this matter may later show to be applicable.

19
20 **PRAYER**

21 WHEREFORE, Defendant prays for judgment as follows:

22 A. That Plaintiff's Complaint be dismissed with prejudice and that
23 Plaintiff take nothing thereby;

24 B. That Defendant be awarded its costs and attorney's fees incurred in
25 defending this action; and

26 C. That Defendant receives such other and further relief as the Court may
27 deem just and proper under the circumstances.

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DATED: March 17, 2009

Respectfully submitted,

Haynes and Boone, LLP

By /s/ R. Thaddeus Behrens
R. Thaddeus Behrens

Attorneys for DEFENDANTS
HIGHLAND CAPITAL MANAGEMENT,
L.P., HIGHLAND CRUSADER OFFSHORE
PARTNERS, L.P., HIGHLAND CREDIT
STRATEGIES MASTER FUND, L.P., AND
NEXBANK, SSB